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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,514	12/09/2003	Paul H. Lundeen	48231-01011	3727
7590 02/14/2007 Holme Roberts & Owen, LLP Suite 1300 90 South Cascade Avenue Colorado Springs, CO 80903			EXAMINER GREENHUT, CHARLES N	
			ART UNIT 3652	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/14/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/731,514

Applicant(s)

LUNDEEN, PAUL H.

Examiner

Charles N. Greenhut

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10, 13 and 14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 13 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

**I. Request for Continued Examination**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/2/06 has been entered.

**II. Amendments**

1. Applicant is advised that when making amendments to the claims deleted text should be indicated with strikethrough except where strikethrough cannot be easily perceived. In such cases double brackets, i.e., [[text]], may be used to delete 5 characters or less. For purposes of this amendment, the single bracketed text will be considered deleted. Future amendments should conform to the requirements of 37 CFR 1.121(c)(2)

**III. Information Disclosure Statement**

1. With respect to the IDS entered 12/2/06, the Gertman reference has been considered. The remaining references have been lined through as having been considered previously.

**IV. Claim Rejections - 35 USC § 112**

The following is a quotation from the relevant paragraphs of 35 U.S.C. 112:

(2) The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 13 positively recites additional limitations with respect to the vehicle, e.g., wherein said vehicle includes..., however, the claim is directed only to the subcombination of an apparatus intended for loading material into the vehicle. The combination of the apparatus and the vehicle itself is never positively recited. The limitations directed to the vehicle

recited in claim 13 render the claim unclear because it cannot be determined whether applicant is attempting to recite the combination of the apparatus for loading and the vehicle or merely the subcombination of the apparatus for loading material into a vehicle.

#### **V. Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim(s) 1, 4, 9, and 13-14 is/are rejected under 35 U.S.C. 102(b) as being anticipated by SCHUTZ (US 2,271,444 A).

1.1. With respect to claim 1 and 4, SCHUTZ discloses a receiving member (19) having a vehicle end and a loading end, movable between a deployed (Fig. 1) and a transfer position (Fig. 2), retaining wall (rear wall of 19), a connector (20) rotably connecting to the vehicle proximate the storage area (13), operation means (23), base member above the ground (bottom of 19) in the shape of a tray, the vehicle end of the receiving member angled at about 90 degrees.

1.2. With respect to claim 9, and 13-14 SCHUTZ additionally discloses opposite sides extending above and away from the vehicle and side walls (of 19), a hinge and pivot mechanism (22).

#### **VI. Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim(s) 2-3 and 5-6 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over SCHULTZ in view of MICHALSKI (US 5,573,365 A).

- 1.1. With respect to claims 2-3, SCHULTZ only discloses an angle of 90 degrees between the vehicle end of the receiving member and the base member. With reference to Fig. 2, MICHALSKI teaches a tarp (200) extending from a guide bar (605) at an obtuse angle to the ground. The tarp (200) extends horizontally at the ground to edge (204). The angle between the section of tarp running from the guide bar (605) to the ground, and the section extending horizontally along the ground is infinitely variable between about 90 degrees and about 180 degrees. The angle formed will depend upon the length of tarp (200), the height of side wall (302), and the forces exerted at (204), by lines (209)/(207), and by the applied load (999). Simply stated, the angle formed between the base and vehicle end of the receiving member is largely a function of the height of the edge of the vehicle to which the receiving member is connected. It would have been obvious to one of ordinary skill in the art to create any angle within the range of about 90 to about 180 degrees as taught by SCHULTZ in order to accommodate for vehicles and/or loads of various sizes.

- 1.2. With respect to claim 5-6, SCHULTZ additionally discloses the operation means activated and the material slides with the force of gravity down the base and vehicle, guide member (front wall of 19),

2. Claim(s) 7 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over SCHULTZ in view of MICHALSKI and further in view of HENDRICKSON (US 6,877,534).

2.1. With respect to claim 7, SCHULTZ fails to teach a frame having canvas thereon.

HENDRICKSON teaches a frame having canvas thereon. It would have been obvious to one of ordinary skill in the art to modify SCHULTZ in view of MICHALSKI with the frame and canvas of HENDRICKSON in order to provide a cost effective support that can be easily replaced and/or cleaned.

3. Claim(s) 8 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over SCHULTZ in view of MICHALSKI and further in view of VON DER HEIDE (US 4,892,259).

3.1. With respect to claim 8, SCHULTZ fails to teach a flat metal sheet formed in the

shape of a tray. VON DER HEIDE teaches a flat metal sheet formed in the shape of a tray. It would have been obvious to one of ordinary skill in the art to modify SCHULTZ in view of MICHALSKI with the tray of VON DER HEIDE in order to accommodate loose particulate.

4. Claim(s) 10 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over SCHULTZ in view of SMITH (US 6,869,265).

4.1. With respect to claim 10, SCHULTZ fails to teach a reel and cable. SMITH teaches a

reel and cable. It would have been obvious to one of ordinary skill in the art to modify SCHULTZ with the reel and cable of SMITH to cost-effectively actuate the platform.

## **VII. Response to Applicant's Arguments**

Applicant's arguments entered 4/6/06 have been fully considered but are not persuasive.

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1. With respect to claim 1, applicant argues that SCHULTZ does not anticipate claim 1 because SCHULTZ fails to disclose a base member formed in the shape of a tray. This argument is not persuasive. The base member (of 19) of SCHULTZ is "formed in the shape of a tray" within the broadest reasonable interpretation of that term.
2. With respect to claim(s) 1, applicant argues that SCHULTZ does not anticipate claim 1 because SCHULTZ fails to disclose a retaining wall. This argument is not persuasive. The rear wall (of 19) of SCHULTZ is a retaining wall within the broadest reasonable interpretation of that term.


#### **VIII. Conclusion**

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles N. Greenhut whose telephone number is (571) 272-1517. The examiner can normally be reached on 7:30am - 4:00pm EST.
3. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.
4. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access

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to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197  
(toll-free).

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